

Title of Report:	Scrutiny review of adult social care eligibility criteria
Report to be considered by:	Health and Wellbeing Board
Date of Meeting:	25 July 2013

Purpose of Report: To advise the Board of the Scrutiny review into adult social care eligibility criteria

Recommended Action: To note the contents of the report

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Executive Report

1. Introduction

- 1.1 Following legal action, The Council's Executive Member for Community Care and his officers requested that the Health Scrutiny Panel conduct a review into the way that the Council provides adult care services, in order to ensure that they continue to be statutorily compliant and do not disadvantage the very vulnerable of West Berkshire.
- 1.2 This report provides background on the national adult social care framework, its application locally, a summarised briefing on the Council's legal position following the High Court hearing on the operation of its Fair Access to Care Services policy and sets out the activity, undertaken and intended, by Scrutiny.

2. The national framework

- 2.1 In 2003 the Department of Health issued Fair Access to Care Service (FACS) guidance to local authorities. This guidance allowed each Council to determine the level at which they would meet a person's assessed care needs. There are 4 levels:
 - Critical
 - Substantial
 - Moderate
 - Low

3. Fair Access to Care Services in West Berkshire

- 3.1 In 2003 West Berkshire Council set a policy of 'critical' only. This policy was subject to a full review in 2008, by officers rather than through Scrutiny, with the outcome being a decision not to change the eligibility criteria. A recommendation was also made to review the criteria again in 2011.
- 3.2 The Dilnott Commission, looking at the future funding of adult social care, made its recommendations to the Government in 2011. On the basis that one of the recommendations was for a national minimum threshold, the Council did not proceed with its intended review. Whilst the Dilnott review will not become statute for 2-4 years, it is anticipated that the Government will accept this proposal.
- 3.3 West Berkshire is one of only 3 councils operating an eligibility criteria of 'critical', Northumberland and WBC chose critical in 2003, Wokingham moved to 'critical' 4 years ago. Other councils have tried to move to critical only but have failed after legal challenge on their consultation process.

4. Legal challenge

- 4.1 On 14 May 2012 an application for a Judicial Review of the Council's policy was brought, via litigation friends, on behalf of 5 learning disabled clients.
- 4.2 The case was heard by the High Court on 1 June 2012 and the court rejected the application for a Judicial Review. On 3 July 2012 the High Court heard an application from the claimants for an oral hearing but again this was refused.

- 4.3 The claimants then lodged an appeal against this decision but the Court of Appeal rejected their claim.
- 4.4 Importantly, the Judge considered the Department of Health FACS guidance and rejected the argument made by the Claimants that it was not permissible to have a critical only policy, stating this was ‘unarguable.’ The Local Authority was entitled to choose critical, rather than any lower category.
- 4.5 Whilst the judgement was very clearly in the Council’s favour, it highlighted the importance of undertaking regular and robust reviews of the policy in respect of the eligibility criteria.

5. Council response

- 5.1 As the policy had last been subject to a full review in 2008, the Executive Member for Community Care and the Head of Adult Social Care agreed that it would be prudent for another review to take place.
- 5.2 The Chairman of the Health Scrutiny Panel (HSP) agreed that it would be desirable for the review to be carried out as Scrutiny by a three-Member task group. As the 2008 review paperwork appeared to stand up to scrutiny very well it therefore seemed to be appropriate to take a similar approach again, whilst also taking full account of the Council’s duties under the Equality Act 2010.
- 5.3 The Terms of Reference therefore agreed were for the Health Scrutiny Panel to conduct a review of the Council’s Fair Access to Care Services policy and in particular:
- Understand the policy’s context, scope and intent
 - Assess the effect of the policy’s application in practice, particularly the extent to which it is statutorily compliant
 - Consider what might be done further to improve the policy
 - Report to the OSMC thence the Executive with recommendations as appropriate.
- 5.4 The Terms of Reference and review methodology were agreed by the Council’s Overview and Scrutiny Management Commission (OSMC) on 11 December 2012.

6. Conduct of the review

- 6.1 The task group has met seven times since its establishment. A summary of its activity is shown in the table below.

Meeting date	Meeting focus
14 January 2013	<ul style="list-style-type: none"> • Election of the Chairman • Agreement of the Terms of Reference • Briefing on <ul style="list-style-type: none"> • The legal position • The national framework • Emerging policy developments (including Dilnott) • West Berkshire volumetrics • Previous activity (policy development and review) • Agreement of the review activity and schedule

Meeting date	Meeting focus
21 January 2013	<ul style="list-style-type: none"> • West Berkshire FACS policy • Context (social care policy framework) • Aim and intent • Scope • Exclusions and diversions • Cost of operation • Cost of a change of policy • Practise elsewhere
25 January 2013	<ul style="list-style-type: none"> • Requirements of the Equality Act 2010 • Equality Impact Assessments
4 March 2013	<ul style="list-style-type: none"> • Examination of performance data • Agreement of the wider engagement and consultation methodology
15 March 2013	<ul style="list-style-type: none"> • Review of performance data • Understanding the assessment process
25 March 2013	<ul style="list-style-type: none"> • Examination of the Judicial Review cases • Consultation plan
24 June 2013	<ul style="list-style-type: none"> • Access for All

- 6.2 In addition to this activity as a collective group, the members of the task group have each individually attended the Resource Panel and a wide-ranging consultation, including with members of the general public, has been undertaken. The results of the latter will be considered by the task group in early August.
- 6.3 It is anticipated that the task group will conclude its work and provide recommendations to the OSMC and thence the Executive in September or October.
- 6.4 It should be noted that in June 2013 the government issued a discussion document that proposed the setting of national minimum eligibility at a level that would equate to 'substantial' in the existing scheme. The new threshold is scheduled to take effect from April 2015.

7. Recommendation

- 7.1 It is recommended that the members of the Health and Wellbeing Board note the contents of this report.

Appendices

There are no Appendices to this report.